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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,887	02/04/2004	Charles H. Perrone JR.	ZIM0587	3884
43963 7590 12/23/2009 ZIMMER TECHNOLOGY - BAKER & DANIELS 111 EAST WAYNE STREET, SUITE 800 FORT WAYNE, IN 46802				
EXAMINER				
SCHILLINGER, ANN M				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
12/23/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/771,887

Applicant(s)

PERRONE ET AL.

Examiner

ANN SCHILLINGER

Art Unit

3774

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 7, 10-16, 18, 19, 21, 22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 10-16, 18, 19, 21, 22 and 24-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 7, 10-12, 15, 16, 18, 19, 21, 22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. (US Pat. No. 6,660,039) in view of Keller (US Pub. No. 2004/0186584). Evans et al. discloses the following of the claimed invention: a first tibia base plate (13) comprising an upper surface, a lower surface and an outer perimeter side surface; an insert (28) comprising an upper surface (67), a lower surface and an outer perimeter side surface extending between said upper surface and said lower surface of said insert; a connector (18) rotatably connecting said insert to said first tibial plate; the plate and the insert having a first configuration that allows rotation, but no translation (col. 10, lines 31-44); and at least one removable pin (49) that when inserted in an opening of the base plate and the insert, prevents rotation (col. 11, lines 14-18). Evans et al. further discloses claims 2 and 18 in col. 11, lines 31-40; claims 3 and 19 in col. 9, lines 62-65; and claims 6 and 22 in col. 3, lines 25-35. Please also see Figures 15, 19, and 22.

However, Evans et al. does not teach the pin being located in outer perimeter side surface. Keller teaches a knee prosthesis with its pin located on the outer perimeter in paragraph 0007 and claim 6 for the purpose of allowing easier instrument accessibility to the pin's location. Therefore, it would have been obvious to one having ordinary skill in the art at the time the

invention was made to modify the device of Evans et al. by moving the pin and its opening to the outer perimeter side surface in order to allow an instrument to more easily access the pin.

Claims 13 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. in view of Keller, further in view of O'Neil et al. (US Pat. No. 6,306, 172). Evans et al., as modified by Keller, teaches the invention substantially as claimed, however, they do not teach a pin with a projection on it. O'Neil et al. teaches a tibial insert with a pin having a projection in col. 5, lines 21-46 for the purpose of preventing separation between the base plate and the insert. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Evans et al. and Keller by providing the pin with a projection in order to prevent separation between the base plate and the insert.

Claims 14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. in view of Keller, further in view of Hurlburt (US Pat. No. 5,658,344). Evans et al., as modified by Keller, teaches the invention substantially as claimed, however, they do not teach a pin made of metal. Hurlburt teaches a tibial insert with a pin made of metal in col. 6, lines 27-39 for the purpose of utilizing the material's strength. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Evans et al. and Keller by making the pin of metal as taught by Hurlburt in order to utilize the material's strength.

Response to Arguments

Applicant's arguments filed 12/2/2009 have been fully considered but they are not persuasive. The Applicant contends that the Evans et al. reference does not disclose a connector that rotatably connects the insert and the first tibial plate. The examiner respectfully disagrees.

Element 18 of the Evans et al. reference connects the insert (28) and the first tibial plate (13) in such a manner that allows rotation between them, thus meeting the claims' limitations.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./
Examiner, Art Unit 3774

/DAVID ISABELLA/
Supervisory Patent Examiner, Art Unit 3774